

ESTTA Tracking number: **ESTTA773843**

Filing date: **09/29/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Selle Royal S.p.A.		
Entity	Joint Stock Company	Citizenship	Italy
Address	Via Vittorio Emanuele, 119 Pozzoleone (VI), 36050 ITALY		

Attorney information	James J. Bitetto Tutunjian & Bitetto, P.C. 401 Broadhollow Road, Suite 402 Melville, NY 11747 UNITED STATES trademarks@tb-iplaw.com Phone:631 844 0080
----------------------	---

Applicant Information

Application No	86960616	Publication date	08/30/2016
Opposition Filing Date	09/29/2016	Opposition Period Ends	09/29/2016
Applicant	Jevo, Inc. 24 West 57th Street, Suite 805 New York, NY 10019 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 2014/08/00 First Use In Commerce: 2014/08/00 All goods and services in the class are opposed, namely: Audio and video recordings featuring physical fitness instruction and training; Digital media, namely, pre-recorded DVDs and downloadable audio and video recordings featuring physical fitness instruction and training; Downloadable software in the nature of a mobile application for use in the health and fitness industries, namely, preparing exercise training plans, messaging, scheduling classes, booking and paying for fitness programs, making payments, and developing health and fitness goals
Class 025. First Use: 2013/11/00 First Use In Commerce: 2013/11/00 All goods and services in the class are opposed, namely: Clothing, namely, shirts, t-shirts, hooded sweatshirts, tank tops, pants, yoga pants, jogging pants, capris, socks
Class 041. First Use: 2013/09/26 First Use In Commerce: 2013/09/26 All goods and services in the class are opposed, namely: Physical fitness and health club services, namely, providing fitness instruction and use of equipment; Providing fitness instruction through on-line, non-downloadable videos and access to instructors; Providing a website featuring information and links relating to exercise and fitness; Providing information in the field of exercise training; Providing a website featuring blogs and non-downloadable publications in the nature of articles in the fields of physical fitness

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2045461	Application Date	07/28/1995
Registration Date	03/18/1997	Foreign Priority Date	05/30/1995
Word Mark	FI'ZI:K		
Design Mark			
Description of Mark	The mark consists of the stylized depiction of the phonetic spelling of the word "physique".		
Goods/Services	<p>Class 012. First use: First Use: 0 First Use In Commerce: 0 bicycle seats and bicycle saddles; parts of bicycles, namely, casings for pneumatic tires, bells, pump stands, mudguards, handle bars, bicycle frames, brakes, cranks, gears, chains, wheels, rims, spokes, hubs, tires and inner tubes</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0 [sports clothing and shoes, namely, socks, head bands, bib tights, jerseys, shorts, gloves, caps, jackets, T-shirts, shoes, shoe covers] *JERSEYS, SHORTS, JACKETS, SOCKS, CAPS AND SHOES, ALL THE AFOREMENTIONED GOODS FOR CYCLING PURPOSE *</p>		

U.S. Registration No.	3468144	Application Date	04/11/2007
Registration Date	07/15/2008	Foreign Priority Date	NONE
Word Mark	FI'ZI:K		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 012. First use: First Use: 0 First Use In Commerce: 0 Saddles and bicycle accessories, namely, water bottle holders for bicycles, bicycle handles, bicycle pedals, kickstands, kits for bicycles composed of tools and tire repair kits for bicycles</p> <p>Class 021. First use: First Use: 0 First Use In Commerce: 0 Bottle gourds</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0</p>		

	Footwear and clothing, namely, tracksuits, salopettes, shirts, trousers, shorts, jackets, socks, hats, caps and shoes, all these goods for cycling purposes
--	---

Attachments	74707851#TMSN.png(bytes) 79039869#TMSN.png(bytes) 374-377 - Notice of Opposition.pdf(313387 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Susan Paik/
Name	Susan Paik
Date	09/29/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Selle Royal S.p.A.,

Opposer,
v.

Opposition No.: [TBD]
Serial No.: 86/960,616
Mark: PHYSIQUE 57 & Design
Published: August 30, 2016

Jevo, Inc. DBA Physique 57,

Applicant.

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Notice of Opposition

Selle Royal S.p.A. (“Opposer”), a Joint stock Company organized and existing under the laws of Italy, and having a principal place of business at Via Vittorio Emanuele, 119, 36050 Pozzoleone (VI) Italy, believes that it will be damaged by, and hereby opposes, the grant of the application of **Jevo, Inc. DBA Physique 57** (“Applicant”), a Corporation of New York at 24 West 57th Street, Suite 805, NY, NY, 10019 to register the mark “PHYSIQUE 57” (Design mark) in the application Serial Number 86/960,616 filed March 31, 2016 for “Audio and video recordings featuring physical fitness instruction and training; Digital media, namely, pre-recorded DVDs and downloadable audio and video recordings featuring physical fitness instruction and training; Downloadable software in the nature of a mobile application for use in the health and fitness industries, namely, preparing exercise training plans, messaging, scheduling classes, booking and paying for fitness programs, making payments, and developing health and fitness goals” in **International Class 009**; for “Clothing, namely, shirts, t-shirts, hooded sweatshirts, tank tops, pants, yoga pants, jogging pants, capris, socks” in **International Class 025**; and for “Physical fitness and health club services, namely, providing fitness instruction and use of equipment; Providing fitness instruction through online, non-downloadable videos and access to instructors; Providing a

website featuring information and links relating to exercise and fitness; Providing information in the field of exercise training; Providing a website featuring blogs and non-downloadable publications in the nature of articles in the fields of physical fitness” in **International Class 041**.

Pursuant to 15 U.S.C. Section 1052, by and through its attorneys, Opposer hereby opposes the same.

1. By the application Serial No. 86/960,616 herein opposed, Applicant is seeking to obtain registration on the Principal Register of the following design mark “PHYSIQUE 57” (hereinafter “Applicant’s ‘616 mark”) for the following goods and services:



Class 009: “Audio and video recordings featuring physical fitness instruction and training; Digital media, namely, pre-recorded DVDs and downloadable audio and video recordings featuring physical fitness instruction and training; Downloadable software in the nature of a mobile application for use in the health and fitness industries, namely, preparing exercise training plans, messaging, scheduling classes, booking and paying for fitness programs, making payments, and developing health and fitness goals”

Class 025: “Clothing, namely, shirts, t-shirts, hooded sweatshirts, tank tops, pants, yoga pants, jogging pants, capris, socks”

Class 038: “Streaming of audio, visual and audiovisual material via a global computer network”

Class 041 “Physical fitness and health club services, namely, providing fitness instruction and use of equipment; Providing fitness instruction through online, non-downloadable videos and access to instructors; Providing a website featuring information and links relating to exercise and fitness; Providing information in the field of exercise training; Providing a website featuring blogs and non-downloadable publications in the nature of articles in the fields of physical fitness.”

2. Applicant’s application Serial No. 86/960,616 for “PHYSIQUE 57” is an In Use application filed in Classes 009, 025, 038 and 041 on March 31, 2016 and such mark was published for opposition on August 30, 2016. This Notice of Opposition is timely filed.

3. Opposer is the owner of at least the following federal trademark registrations:
- a. No. 2,045,461 registered on the Principal Register on March 18, 1997 for the trademark FI’ZI:K (Design mark) for “Bicycle seats and bicycle saddles; parts of bicycles, namely, casings for pneumatic tires, bells, pump stands, mudguards, handle bars, bicycle frames, brakes, cranks, gears, chains, wheels, rims, spokes, hubs, tires and inner tubes” in **International Class 012** and for “JERSEYS, SHORTS, JACKETS, SOCKS, CAPS AND SHOES, ALL THE AFOREMENTIONED GOODS FOR CYCLING PURPOSE” in **International Class 025** (hereinafter “FI’ZI:K ‘461, which is reprinted below):



- b. No. 3,468,144 registered on the Principal Register on July 15, 2008, for the trademark FI’ZI:K (Design mark) for “Saddles and bicycle accessories, namely, water bottle holders for bicycles, bicycle handles, bicycle pedals,

kickstands, kits for bicycles composed of tools and tire repair kits for bicycles” in **International Class 012**; for “Bottle gourds” in **International Class 021**; and for “Footwear and clothing, namely, tracksuits, salopettes, shirts, trousers, shorts, jackets, socks, hats, caps and shoes, all these goods for cycling purposes” in **International Class 025** (hereinafter “FI’ZI:K ‘144, which is reprinted below):

fi’zi:k

4. Opposer’s Registrations listed above have not been cancelled, are valid, and are now in full force and effect.

5. Opposer’s FI’ZI:K ‘461 and FI’ZI:K ‘144 Registrations are incontestable under Section 15 of the Lanham Act, 15 U.S.C. §1605. Consequently, this is conclusive evidence of the validity of the registered marks and of the registration of the marks, of Opposer’s ownership of the marks, and of Opposer’s exclusive right to use the registered marks in commerce under Section 33 of the Lanham Act, 15, U.S.C. §1115.

6. The Opposer has been continuously and prominently using its FI’ZI:K ‘461 and FI’ZI:K ‘144 trademarks (collectively, “FI’ZI:K trademarks”) in connection with the goods listed in their respective registrations and has been actively promoting and expanding its use of the marks.

7. As a result of the longtime and widespread use in commerce by the Opposer of the aforesaid FI’ZI:K trademarks in connection with their respective goods, the marks have acquired extensive goodwill, have developed a high degree of distinctiveness, are assets of the Opposer, and are well known and recognized as identifying at least the listed

goods which have their origin with or have been authorized by the Opposer. In addition, Opposer's FI'ZI:K trademarks have reached the good reputation they enjoy, long prior to the filing date of Applicant's '616 mark.

8. Opposer has priority with respect to the mark at issue in this Opposition. Opposer adopted and commenced use of its FI'ZI:K marks as trademarks long before Applicant filed its In Use application for its '616 mark.

9. Applicant's mark "PHYSIQUE 57" is confusingly and deceptively similar to Opposer's previously used and duly registered FI'ZI:K trademarks at least in sound, meaning, connotation and commercial impression. In particular, the term "fi'zi:k" is a phonetic spelling of the term "physique". Thus, the sound (phonetics) and connotation of the dominant term "PHYSIQUE" in the Applicant's mark, as compared with the term "FI'ZI:K" of the Opposer's registered marks, are identical.

10. Applicant's goods in Class 025 encompass, are closely related and/or are identical to at least the goods in Class 025 sold and provided in connection with Opposer's FI'ZI:K trademarks, and such goods would travel and/or be promoted through the same channels of trade for sale to, use by and distribution to, the same class of purchasers.

11. Applicant's goods in Class 009 and services in Class 041 encompass, are closely related and/or overlap with to at least the goods sold and provided in connection with Opposer's FI'ZI:K trademarks, and such goods in Class 009 and services of Class 041 would be offered and/or be promoted through the same channels of trade for use by and distribution to, the same class of purchasers.

12. Due to the similarity between Applicant's mark and Opposer's previously used and duly registered FI'ZI:K trademarks, including the closely related nature of the respective goods/services of the parties, Applicant's mark "PHYSIQUE 57" is likely to cause confusion, mistake or deception as to the source of origin of Applicant's goods/services in that the public, the trade and others are likely to believe that Applicant's goods/services are: (a) the same

goods/services as Opposer's and/or (b) endorsed, provided, sponsored, approved, licensed by, affiliated with or in some other way legitimately connected to Opposer and/or its goods or licensed products.

13. Thus, the use and registration of the Applicant's '616 mark for the "PHYSIQUE 57" mark at least for goods in Classes 009 and 025 and services in Class 041 is likely to cause confusion or to cause mistake or deception in the trade and among purchasers and potential purchasers with Opposer's previously used and duly registered FI'ZI:K trademarks, causing damage to Opposer.

14. The use and registration of the Applicant's '616 mark for the "PHYSIQUE 57" mark is likely to dilute the distinctive quality of Opposer's FI'ZI:K trademarks, again causing damage to Opposer.

15. Registration of the mark shown in the Application Serial No. 86/960,616 will result in damage to Opposer under the provisions of Section 2(d) of United States Trademark Act, 15 U.S.C. 1052(d), pursuant to the allegations stated above.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and Application Serial Number 86/960,616 be refused registration.

Accompanying this Notice of Opposition is the required fee of \$900.00.

Dated: September 29, 2016

Respectfully submitted,
Selle Royal S.p.A.

By its attorneys,

/Susan Paik/

Susan Paik, Esq.

James J. Bitetto, Esq.
TUTUNJIAN & BITETTO, P.C.
401 Broadhollow Road, Suite 402
Melville, NY 11747
Tel: (631) 844-0080
Fax: (631) 844-0081
Email: susan@tb-iplaw.com

ATTORNEY(S) FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the Applicant by mailing said copy on September 29, 2016 via first-class mail, postage prepaid, to:

**Jevo, Inc. DBA Physique 57
24 West 57th Street, Suite 805
NY, NY 10019**

/Susan Paik/

Susan Paik